

CHAPTER 67:42:16

SCOPE OF SERVICES FOR CHILD CARE PROGRAMS

Section

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67:42:16:01. Definitions. Terms used in this chapter mean:

- (1) "Alternative care," care provided in family day care homes, day care centers, group family day care homes, and before and after school programs;
- (2) "Applicant," an individual, agency, institution, or organization which submits an application for a license or registration certificate to the department as provided in this chapter;
- (3) "Day care center," a facility for the care and supervision of 21 or more children on a regular basis for part of a day as a supplement to regular parental care;
- (4) "Day care program" or "program," refers to both day care centers and group family day care homes;
- (5) "Employee applicant," an individual applying to a provider for employment;
- (6) "Family day care," the provision of regular care and supervision of no more than 12 children including the provider's own children who are under the age of six years for part of a 24-hour period as a supplement to regular parental care;
- (7) "Facility," a family day care home, day care center, group family day care home, before and after school program licensed or registered under the provisions of this chapter;
- (8) "Group family day care home," a facility where regular supervision of 13 to 20 children is provided for part of a 24-hour period as a supplement to regular parental care;
- (9) "Household member," a person who uses a facility as a permanent or part-time residence and who may have contact with children in the facility;
- (10) "License," the document described in SDCL 26-6-15 which certifies that a provider meets applicable licensing standards contained in this chapter;
- (11) "Medication," a substance that is intended to relieve pain or treat disease;
- (12) "Provider," an individual, agency, institution or organization providing services covered in this chapter;

(13) "Provider applicant," an individual, agency, institution, or organization applying to be a provider under this chapter;

(14) "Registered helper," an employee or volunteer present in the family day care home to assist with the care of children;

(15) "Registration certificate," the document described in SDCL 26-6-15 which certifies that a provider meets the family day care registration standards contained in chapter 67:42:03;

(16) "Staff member" or "staff person," an employee or volunteer of a facility; and

(17) "Volunteer applicant," an individual applying to provide voluntary services for a provider.

Source:

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

67:42:16:02. Application. The provisions of this chapter apply to alternative care facilities regulated by chapters 67:42:03, 67:42:10, and 67:42:14.

Source:

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

67:42:16:03. Initial evaluation and approval – Renewal of license or registration certificate.

The department's initial evaluation of the applicant includes reference checks, personal interviews, a screening for records of abuse or neglect, a criminal record check, and on-site visits. The applicant must provide three references.

Based on the evaluation, the department shall determine whether to issue a license or registration certificate.

Renewal of a license is based on the department's annual evaluation of the facility and care provided. Renewal of a registration certificate is based on the department's biennial evaluation of the facility and care provided.

Source:

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

67:42:16:04. Criminal record check. The department shall secure a criminal record check to obtain information concerning convictions for criminal offenses by a prospective provider of family day care and any adult living in a prospective family day care. For family day care, day care programs, and before and after school programs, the department shall review the provider's records to ensure that the criminal records are being secured for staff in order to detect convictions for any of the following:

- (1) A crime that would indicate harmful behavior towards children;
- (2) A crime of violence as defined by SDCL 22-1-2 or a similar statute from another state;
- (3) A sex crime pursuant to SDCL chapters 22-22 or 22-24A or SDCL 22-22A-3 or similar statutes from another state; or
- (4) Within the preceding five years, a conviction for any other felony.

Source:

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

67:42:16:05. Screening for substantiated reports of abuse and neglect. The department shall screen a provider applicant, family members, and other household members who are at least ten years old, an employee of the facility, an employee applicant, a volunteer, and a volunteer applicant to determine if the individual has been involved in any substantiated incidents of child abuse or neglect. The individual may not have a substantiated report of child abuse or neglect. Substantiated reports of child abuse or neglect include reports placed into the department's central registry under § 67:14:39:03, reports placed on the central registry of another state, and reports that were investigated and substantiated by a tribal program.

If the screening locates an individual's name on the department's central registry and the individual has not already been given due process on the substantiation, the department shall notify the individual in writing that the individual may request a hearing to refute the accuracy of the information found.

If the screening locates an individual's name on the central registry of another state, it is the individual's responsibility to contact the other state to access the process for removal of the individual's name from that state's central registry. If the other state has such a process and removes the individual's name from its central registry, the individual shall request the other state to submit documentation to the department verifying the removal of the individual's name from its central registry.

If the screening locates a report that was substantiated by a tribal program, it is the individual's responsibility to contact the tribal program to access the process for removal of his or her name from the record of the report. If the tribal program has such a process and removes the individual's name from the record of the report, the individual shall request the tribal program to submit documentation to the department verifying the removal of the individual's name from the record.

Source:

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

67:42:16:06. Notice to facility. The department shall notify the facility that the name of the facility's employee, employee applicant, volunteer, or volunteer applicant was located through the screening process when one of the following occurs:

(1) Thirty days have lapsed since the department notified the individual that the name was located and the individual has not requested a review;

(2) Thirty days have lapsed since a review was held which upheld the department's action and the individual has not requested a fair hearing;

(3) A fair hearing was held and the decision upheld the department's action; or

(4) A screening in a state other than South Dakota resulted in a finding as outlined in

SDCL 26-6-23.1.

Source:

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

67:42:16:07. Physical health standards required of applicant and applicant's family.

An applicant for family day care must have a physical examination. A physical examination completed within the 12 months preceding the date of application is acceptable. The applicant must obtain the physical examination forms from the department. The forms must be completed by the attending physician, physician's assistant, or certified nurse practitioner and returned to the department.

The applicant must also present evidence to the department that each household member under the age of 18 meets the Department of Health's requirements for immunizations.

The department may request additional medical statements if a situation, such as a change in the health of the applicant or another household member indicates that an additional medical statement is desirable.

Source:

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

67:42:16:08. Qualifications of substitute providers. A substitute provider must be at least 18 years of age and may not have on record a substantiated report of child abuse or neglect. A substitute may not be used more than 12 hours per week.

Source:

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

67:42:16:09. Reporting incidents or changes in circumstances. The provider shall report a change in circumstance that may affect the provider's ability to comply with the requirements of the provider's license or registration certificate or ability to provide adequate care. A change in circumstance includes items such as a change of address, a change in the household size, a change in the household composition, a change in the condition of the facility or home, or involvement with the Division of Child Protection Services or law enforcement concerning allegations of child abuse or neglect. The report must be made to the provider's licensing worker or agency within 24 hours after the change in circumstance occurs.

The provider shall immediately report all incidents of suspected child abuse or neglect either to the department or to law enforcement officials.

A facility must notify the department within 24 hours after the occurrence of an unusual incident such as fire or serious injury to a child or serious illness that results in the hospitalization of the child or the death of a child while the child is in care.

Source:

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

67:42:16:10. Denial of license or registration certificate. The department may deny a license or registration certificate to an applicant based on an evaluation, substantiated by facts, showing that the applicant does not meet standards for care.

Within 60 days after completion of the application, the applicant shall receive a written notice of approval or denial of a license or registration certificate. If the application is denied, the notice shall include the reasons for the denial. An applicant may reapply when the applicant has taken corrective action related to the reasons for the original denial of the license or registration certificate.

Source:

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 25-7A-56, 26-6-16.

67:42:16:11. Revocation of license or registration certificate. Violation of the provisions of this chapter are grounds for revocation of a license or registration certificate. Before a license or registration certificate is revoked, the department shall give a 30-day's written notice of revocation to the provider and shall make a full disclosure of the reasons for revocation. The 30-day written notice is not required when the revocation is necessary to prevent danger to the life, health, or safety of a child.

The provider may not reapply for a license or registration certificate for at least one year after the date of revocation.

Source:

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16, 26-6-23, 26-6-24.

67:42:16:12. Fair hearing. A provider applicant, an employee applicant, a volunteer, a volunteer applicant, or a provider is entitled to a fair hearing if aggrieved or dissatisfied with any action or inaction on the part of the department. Fair hearings are conducted under the provisions of chapter 67:17:02.

Source:

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

67:42:16:13. Maintenance of records. A record shall be maintained by the provider on each child. That record shall include the child's name, date of enrollment, date enrollment is terminated, the names and telephone numbers of the child's doctor, dentist, parent, or person to contact in the event of an emergency, and any other information required by the department or desired by the provider. A provider must maintain these records for a period of six months after the child ceases receiving care.

Source:

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

67:42:16:14. Confidentiality. The files and records of the provider shall be kept confidential.

A provider shall maintain in confidence all information concerning a child. Details of a child's life or that of the child's family may not be shared with unauthorized individuals unless a signed authorization is obtained. The provider shall make its files and records available for inspection by the department for registration or licensure purposes.

Source:

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

67:42:16:15. Transportation. A vehicle used for transportation may not carry more people than its stated passenger capacity. Except when transporting children to and from school, the required staff-child ratio must be maintained when children are in transport.

Source:

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

67:42:16:16. Insurance. Each day care center, group family day care home, and before and after school program must carry liability insurance. Each vehicle used for transporting children shall have liability insurance that covers the children being transported.

Source:

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.

67:42:16:17. Final inspection reports – Required posting. Each facility must post, in a visible location within the facility, a copy of the results of the facility’s latest inspection. If the inspection resulted in a plan of correction, the facility must maintain a copy of the plan and make it available to individuals on request. The facility must also post the department’s telephone number and address for individuals desiring more information concerning the facility’s inspection.

Source:

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-11.

67:42:16:18. Telephones. Each facility must provide one nonpay telephone which can be used for general and emergency uses.

Source:

General Authority: SDCL 26-6-16.

Law Implemented: SDCL 26-6-16.